

IN THE MATTER OF LICENSE NO. 282855 MERCHANT MARINER'S DOCUMENTS
Issued to: Joe V. GOULART

DECISION ON APPEAL
UNITED STATES COAST GUARD

1858

Joe V. GOULART

SUPPLEMENTARY ORDER

Pursuant to Order EM-25 of the National Transportation Safety Board, served on 1 August 1972, the Order in this case is AMENDED to read as follows:

"That your License No. 282855 and all other licenses and documents are suspended for three months. The period of suspension ordered includes any period of time during which you have actually been deprived of your license and documents since 1 July 1970."

C.R. BENDER
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C., this 21st day of September 1972.

IN THE MATTER OF LICENSE NO. 282855 MERCHANT MARINER'S DOCUMENT
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Joe V. GOULART

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1858

Joe V. GOULART

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 1 July 1970, an Examiner of the United States Coast Guard at San Diego, California, revoked Appellant's license upon finding him guilty of violation of a statute. The specification found proved alleges that while serving as master on board the fishing vessel HIGH SEAS under authority of the license above captioned, from on or about 30 December 1969 to 10 March 1970, Appellant did wrongfully employ or engage to perform duties of mate aboard HIGH SEAS, a fishing vessel of 367 gross tons, a person or persons not licensed to perform such duties in violation of R.S. 4438a (46 U.S.C. 224a) for a fishing voyage on the high seas which began and ended at San Diego, California.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence documentary evidence and testimony of witnesses.

In defense, Appellant offered in evidence the testimony of witnesses.

At the end of the hearing, the Examiner rendered a decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order revoking all documents issued to Appellant.

The entire decision was served on 9 July 1970. Appeal was timely filed on 1 July 1970. Appeal was perfected on 2 September 1970.

FINDINGS OF FACT

On all dates in question, Appellant was serving as master of the fishing vessel HIGH SEAS and acting under authority of his license while the ship was on voyage on the high seas within the meaning of 46 U.S.C. 224a.

Although Appellant was master of the vessel for purposes of the vessel documentation laws and for purposes of R.S. 4438a (46 U.S.C. 224a), which requires all masters and mates aboard vessels subject to it to be licensed for the purpose of such service, he had abdicated, by private agreement with the owner of the vessel, all other powers and duties of a master of a vessel. The "fish captain" had complete authority to dictate who would be in the crew. The "fish captain" occupied the master's quarters on the vessel. The "fish captain" assigned all persons to their duties. The "fish captain" told Appellant when and where to perform duties, and what duties to perform.

Appellant was berthed with the crew of the vessel and was treated by the "fish captain" as a member of the crew who could be ordered to duties as the "fish captain" wished.

Neither the "fish captain" nor any person in the crew, other than Appellant, held a license of any kind issued by the Coast Guard.

Appellant never did more than perform navigational duties, as called upon by the "fish captain," to direct the vessel from one place to another. When Appellant was not performing such duties on order, either the "fish captain" or some other person appointed by the "fish captain" was in charge of the navigation of HIGH SEAS.

Appellant was regarded as a "paper master" by all persons engaged in the operations of the vessel.

Persons not qualified under 46 U.S.C. 224a served as mate or mates aboard HIGH SEAS for the voyage in question.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that there is no substantial evidence to support the findings of the Examiner and that the entire proceeding was held contrary to law. Although Appellant specified four grounds for appeal he admits that his first two and his second two are essentially the same. I so present them.

APPEARANCE: Sullivan, Marinos, Augustine & Delafield, of San Diego, California, by Roberts E. Madruga, Esq.

OPINION

I

Appellant's argument that the Examiner's findings are not based upon substantial evidence is predicated upon undisputed testimony that Appellant was told by the owner of the vessel that he had no voice in the hiring of crewmembers but would accept anyone hire by the "fish captain" and that the fish captain was in control of all operations. Thus, Appellant did not engage or employ any person in the crew of this vessel, but only obeyed orders of the "fish captain."

Although Appellant does not mention Decision on Appeal No. 1571 in connection with this point, it can be seen that he is attempting to make a distinction in that in the earlier case, although the crew had been engaged by the owner, the members were held to be employed for certain purposes by the master, while in the instant case the crew not only was engaged by the fish captain but was also, it is urged, for all purposes employed by the fish captain. At the hearing, although, not on appeal, Appellant introduced the term "paper master," meaning, obviously, a master who was master for purposes of the documentation laws and master for the purpose of fulfilling the requirement of 46 U.S.C. 224a that the master must be licensed, but was not the master for any other purpose, being merely a member of the crew with the fish captain being the true master for all those other purposes.

Such a cynical view cannot be accepted from a person licensed by the Coast Guard and purporting to act under authority of his license as master.

The evidence clearly shows that Appellant made a statement to the Coast Guard on 29 December 1969, in recording the change of master of HIGH SEAS, that he was in fact the master of that vessel, replacing one Walter Hinds, and that the vessel would not be employed in any manner whereby the revenue of the United States might be defrauded. Surely, Appellant could not be heard to argue that he had abdicated his duties to the fish captain, under a private agreement with the owner, such that the could not be held responsible to the United States for an unlawful use of the vessel.

In another area, although the matter was not raised at the hearing at all, R.S. 4391 (46 U.S.C 513) requires a master of a fishing vessel to make an agreement in writing with convoy fisherman employed on the vessel. While the statute also recognizes some special considerations for the fisheries in requiring that such agreements be endorsed or countersigned by the owner or his agent, the agreement is between the master and the fisherman employed. In the absence of evidence in the record I can presume that this law was complied with that Appellant as master signed an agreement with his fisherman employed aboard the vessel. Legally, they were thus employed by him. Even if it might be urged that the law was violated and Appellant had not in fact signed such an agreement with his fisherman, he cannot be heard to argue that his violation of one law justifies his violation of another.

The position of master of a vessel is clearly established in the body of the law of the sea and statutes of the United States merely explicate some specific requirements for qualifications for such a position and for duties to be performed by a master in areas not covered by the general law of the sea.

Appellant's recorded himself as master of HIGH SEAS both on the vessel's document and on the crew list which he filed for the voyage. He was in fact the master required by law aboard the vessel. If he chose by private agreement to abdicate his authority, so carefully guarded by the courts of the United States, he did so at the peril of loss of his license.

As master of HIGH SEAS Appellant employed as mate or mates on the vessel persons not qualified for such service under 46 U.S.C. 224a.

II

Appellant's second point is that 46 CFR 157.30-10 exceeds the authority granted by Congress in 46 U.S.C. 224a and thus the order in this case is unlawful under the decision in United States v Silvia, D.C S.D. Cal. (1967), 272 F. Supp. 46, which is absolutely dispositive of this case.

Appellant acknowledges certain distinguishing marks in the Silva case (the case against the owner of the vessel), but also claims that had the master of the vessel in that case been licensed he could also have been "charged" instead of the owner. Appellant used the word "charged" both as to the action brought against the owner and action which might have been brought against the master. Noting first that the matter of the Silva case was a civil penalty assessed against the owner, I acknowledge that if the master of the vessel had been licensed, action could have been taken under R.S.

4450 against his license. But I must point out that the unlicensed master of the vessel in the Silva case was amenable to the civil penalty action as was the owner, because a master, whether licensed or not, "employs" members of the crew and thus comes within the penalty provisions of the statute.

III

I note that Appellant does not contest the propriety of the order of revocation if the findings are supportable. This is understandable since it is clear from the record that Appellant had specifically been warned in the past that future service as master of a vessel subject to 46 U.S.C. 224A without having any licensed officers required by the statute would result in loss of his license.

ORDER

The order of the Examiner dated at San Diego, California, on 1 July 1970, is AFFIRMED.

C.R. BENDER
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C., this 22nd of September 1971.

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